

December 26, 2016

From:

Mr. Jesse Noell, P.O. Box 7005 Eureka, CA 95502

Ms. Stephanie Bennett, P.O. Box 7005 Eureka, CA 95502

Ms. Kristi Wrigley, 2550 Wrigley Road, Eureka, CA 95503

RECEIVED BY  
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BOARD OF FORESTRY AND FIRE PROTECTION

Dear Executive Officer of the Board of Forestry:

We are re-submitting our 2007 Petition for Emergency Rules. We appreciate Executive Officer George Gentry's helpful suggestions for re-submittal and incorporate those suggestions. (please see the copy of Gentry's letter dated January 29, 2008)

APA 11340.6 covers the content of any petition to the Board. This petition shall state the following clearly and concisely:

- (a) The substance or nature of the regulation, amendment, or appeal requested;
- (b) The reason for the request;
- (c) Reference to the authority of the state agency to take the action requested.

**A) THE SUBSTANCE OR NATURE OF THE REGULATION, AMENDMENT, OR APPEAL REQUESTED**

- 1. We petition The Board of Forestry to issue a "stop work" order on all timber harvest plans in Elk River until stream channel conditions and water quality have recovered.
- 2. We petition the Board of Forestry to adopt regulations that prevent the filing of timber harvest plans upstream of the Residential areas of Elk River where nuisance flooding has been identified until the dangerous nuisance flooding conditions have been abated.

**B) THE REASON FOR THE REQUEST** *is that nuisance conditions in Elk River have worsened and the Board of Forestry is ordering Elk River Residents to suffer continuing damage. That action is unconstitutional. Despite ever increasing and even more provable threats to life, liberty, and property of Elk River Residents, timber harvest plans are still being filed. The Director knows that these plans will result in immediate, significant, and long-term harm to the natural resources of the state and to specific individuals in the Upper Elk River watershed. Therefore, the Director knows that a substantial question does indeed exist.*

*In 2007, the Director of CDF/CalFire' did not find that a "substantial question" exists. Then we petitioned this issue to the Board of Forestry. Thus, we resume the issue with this petition.*

**History**

*The Board of Forestry previously deliberated in meeting held in Lake Tahoe in or about 1997 regarding the need for CDF to have Stop Work authority to prevent the nuisance conditions from worsening. The Declarations filed in Oakland Court under penalty of perjury by Dean Lucke, CDF and Peter Caferata, CDF, circa 1991 to 2002 stated that no specific rules were required to carry out the intent of*

*the Legislature with respect to 4512 (c), (d), 4551 (a), 4551.5, because the "rules as a whole" assure this intent.*

*Today the ever-increasing channel infill of the beds and banks of streams (held in reserve by the State of California upon statehood) creates an increasingly dangerous condition. When the increased peak flow that results from rain falling on areas where harvest of trees, soil compaction, and road construction has increased effective runoff---- and this runoff reaches the portions of the channels that are obstructed by sediment, ----the flood flow is diverted overbank by the obstructing sediment onto adjacent landowners property causing damage and threats to health and safety.*

*As many as 400 plus properties are affected by the super-induced flooding that CDF and other agencies long ago declared to be a result of timber harvest that CDF permitted<sup>1</sup>. Many residents living at the 400 properties face recurring floods flowing over County Roads to get to school and to work.*

*Dean Lucke, Deputy director of CDF, stated in 1998 at the Freshwater School meeting that "timber harvest is immediate, long term watershed restoration." The increasingly severe flooding and channel infilling demonstrates that both Dean Lucke's prior declaration to the Oakland Court and his Freshwater School statements are false, and that the Forest Practice Rules are woefully inadequate to prevent "(the) take(ing) of private property for public use without payment of just compensation in violation of the California and United States Constitutions", or to ensure "the public's need for watershed protection" .. . "in this and future generations".*

*Finally, the rules clearly are not working to accomplish the goal of "watershed restoration" or of even harmonizing with our US Constitution. They do not harmonize with existing laws and trample important constitutional rights. The Residents of Elk River are purposefully selected by the Board to bear the damages caused by timber harvest plans. No other California citizens suffer such damages from Elk River timber harvests. Therefore, The Board of Forestry is ordering the Elk River Residents to be damaged without just compensation. This is overt discrimination to select some citizens to suffer a disproportionate burden from all other citizens.*

### **C ) REFERENCE TO THE AUTHORITY OF THE STATE AGENCY TO TAKE THE ACTION REQUESTED**

**Z'BERG-NEJEDLY FOREST PRACTICE ACT 251 Z'Berg-Nejedly Forest Practice Act Division 4, Chapter 8, Public Resources Code Effective January 1, 2012**

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<sup>1</sup> CDF letter, 1998

Article 1.

General Provisions 4511. This chapter shall be known as the Z'berg-Nejedly Forest Practice Act of 1973. 4512. Findings and declarations.

(a) The Legislature hereby finds and declares that the forest resources and timberlands of the state are among the most valuable of the natural resources of the state and that there is great concern throughout the state relating to their utilization, restoration, and protection.

(b) The Legislature further finds and declares that the forest resources and timberlands of the state furnish high-quality timber, recreational opportunities, and aesthetic enjoyment while providing watershed protection and **maintaining fisheries** and wildlife.

(c) The Legislature thus declares that it is the policy of this state to encourage **prudent and responsible** forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to **the public's need for watershed protection, fisheries** and wildlife, sequestration of carbon dioxide, and recreational opportunities alike **in this and future generations**.

*It is neither prudent or responsible forest management that results in the persistent, predictable, and preventable damage and injury to Elk River Residents.*

*It is neither prudent or responsible forest management that results in deprivations of civil rights, particularly since the same discrete group of citizens is the only one whose rights are damaged. Clearly this reeks of targeting selected individuals for undue punishment, a form of discrimination.*

(d) It is not the intent of the Legislature by the enactment of this chapter to **take private property for public use without payment of just compensation** in violation of the California and United States Constitutions.

*When a perverse result occurs from a wholesome intent, the wholesome intent does not immunize the actor from those damages he caused. Yet this perverse result in Elk River does reveal that the Board of Forestry is either incompetent or corrupt. In either case, the Board of Forestry is responsible to reform its practices and repair the harm already caused. In short, Board of Forestry had a duty to make whole those it has damaged.*

*The rules of the Board have purposefully and repeatedly taken private property for public use without payment of just compensation. For close to thirty years, multiple private citizens in Elk River have suffered the destruction of their homes, their septic systems, and their domestic water supply as a direct result of these rules. Residents have persistently asked this Board to stop the harm and repair them. The Board has persistently refused to change its practices that it knows injures certain citizens. These damages are proven, are chronic, and are all directly a result of Board of Forestry's biased and discriminatory policies.*

*Elk River Residents are uniquely damaged from the enactment of this chapter in ways no other citizens are. Board of Forestry knows who will be damaged and how, yet Board of Forestry continues to enact regulations that have already been proven to damage and will continue to violate citizens.*

*Therefore, Board of Forestry intentionally targets Elk River Residents to systematically and uniquely suffer damages. Board of Forestry owes us a duty to immediately stop the behavior that causes these damages and to repair all prior damages caused by enactment of these rules.*

Article 4. Rules and Regulations. 4551. Adoption of district forest practice rules and regulations.

(a) The board shall adopt district forest practice rules and regulations for each district in accordance with the policies set forth in Article 1 (commencing with Section 4511) of this chapter and pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of Z'BERG-NEJEDLY FOREST PRACTICE ACT 257 the Government Code to assure the continuous growing and harvesting of commercial forest tree species and **to protect the soil, air, fish and wildlife, and water resources, including, but not limited to, streams lakes and estuaries.**

*In Elk River, harvesting of commercial forest tree species has been ABSOLUTELY proven to be incompatible with existing uses of soil, air, fish, and wildlife. The endangered coho salmon populations are reduced each year as a result of enactment of forest practice rules; the Elk River coho commercial fishery has been destroyed. There is no dispute that the cause of the decline of Elk River health and vitality is timber harvest activities permitted by the Board of Forestry.*

*Upper Elk River is not an industrial community w/a few residences. Upper Elk River is a residential community w/one industry. When that industry's (forestry) behavior threatens and damages beneficial uses of soil, air, fish and wildlife, and water resources, and human lives then that industry's damaging behavior must be terminated. Timber harvest in Elk River is incompatible with living things, including humans.*

*Taking private property for the alleged public purpose of regulating forestry is not what the Legislature intended and is not what the US Constitution permits. But "taking private property" is what the Board of Forestry permits in direct opposition to our Constitution. The Board of Forestry rules must be revised to preclude this perverse outcome.*

4551.5. Application, development. Rules and regulations shall apply to the conduct of timber operations and shall include, but shall not be limited to, measures for fire prevention and control, for soil erosion control, for site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, **for water quality and watershed control, for flood control**, for stocking, for protection against timber operations which unnecessarily destroy young timber growth or timber productivity of the soil, for prevention and control of damage by forest insects, pests, and disease, for the protection of natural and scenic qualities in special treatments areas identified pursuant to subdivision (b) of Section 30417, and for the preparation of timber harvesting plans. In developing these rules, **the board shall solicit and consider** recommendations from the department, recommendations from the Department of Fish and Game relating to the protection of fish and wildlife, recommendations from the State Water Resources Control Board and the California regional water quality control boards relating to water quality, recommendations from the State Air Resources Board and local air pollution control districts relating to air pollution control, and recommendations of the California Coastal Commission relating to the protection of natural and Z'BERG-NEJEDLY FOREST PRACTICE ACT 258 scenic coastal zone resources in special treatment areas.

*Soliciting and considering recommendations is obviously not sufficient to carry out the rules properly. Board of Forestry has long been in possession of abundant and robust data to inform it that timber harvest in Elk River is destructive to the Public Trust*

*Resources and to the residents who live there. Considering our damage is not equivalent to repairing it and certainly not equivalent to stopping it. Considering that the coho salmon are dying because of sediment pollution from timber harvest does not revitalize the salmon fishery. The rules have failed to harmonize with other laws.*

**4555.** Withholding decisions; emergency regulations. If the director determines that a substantial Z'BERG-NEJEDLY FOREST PRACTICE ACT 259 question exists concerning whether the intent of this chapter is currently provided for by the rules and regulations of the board, and that approval of a timber harvesting plan which has been filed **could result in immediate, significant, and long-term harm to the natural resources of the state, the director may withhold decision on a timber harvesting plan.** However, within five days of that action, the director shall notify the board of that action. Within 30 days of the receipt of the notice, the board shall, after a public hearing, make a determination as to whether or not the intent of this chapter has been provided for in the rules and regulations of the board. The determination shall be conclusive. If the board finds that the intent of this chapter has not been provided for in the rules and regulations, the board shall act to amend the rules by emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The director shall act upon the plan within 15 days of the board's action. Emergency regulations adopted pursuant to this section shall be effective for not more than 120 days. The regulations may be made permanent if the board acts to adopt or revise its rules and regulations pursuant to procedures established in this article for the adoption of other than emergency regulations.

*In 2016, there is no "could" result in harm. Approval of timber harvest plans in Elk River has already resulted and will continue to result in **immediate, significant, and long-term harm** to the natural resources of the state. This harm is elaborately documented in the public record and universally well-known by any and all who work or live in Elk River. The Director should withhold decisions on any timber harvesting plan in Elk River until it can be undeniably proven that no damages will result and that all prior damages have been repaired. To do otherwise is to subject selected citizens to tyranny.*

*Who does our public agency, The Board of Forestry serve if it persists in a pattern and practice of injuring selected citizens and violating the Public Trust Resources? The Rules do not demonstrate attainment of Legislative Intent, State or US Constitutional compliance and protection of the public welfare. History documents increasing harm and injury to Residents of Elk River; something that must be abated before the Board serves the special needs of one private landowner.*

Sincerely,

\*Jesse Noell

\*Stephanie Bennett

\*Kristi Wrigley

Scott Keele

Susan keele

*Christie Pastoris 2492 Wrigley Rd Eureka 12-28-16  
Norm Pastoris 2492 Wrigley Rd Eureka 12-28-16  
Jesse Noell, December 28, 2016, at Eureka Ca.*

*Stephanie C. Bennett December 28, 2016*

*Kristi Wrigley Dec. 28, 2016 2550 Wrigley Rd  
Eureka Ca. 95503*

*Scott Keele Dec. 28, 2016*

*Susan Keele Dec. 28, 2016*



## BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246  
SACRAMENTO, CA 94244-2460  
Website: [www.bof.fire.ca.gov](http://www.bof.fire.ca.gov)  
(916) 653-8007



January 29, 2008.

Mr. Jesse Noel.  
Ms. Stephanie Bennett.  
Ms. Kristi Wrigley.  
P.O. Box 928.  
Eureka, CA 95502.

The Board is in receipt of your letter as of January 3<sup>rd</sup> entitled "Request for Emergency Rules". This letter requests, among many things, for the Board to address a petition for rulemaking pursuant to the Administrative Procedure Act (APA) 11340, et seq., as well as Public Resources Code 4555.

APA 11340.6 covers the content of any petition to the Board thusly:

*11340.6. Except where the right to petition for adoption of a regulation is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute, any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation as provided in Article 5 (commencing with Section 11346). This petition shall state the following clearly and concisely:*

- (a) The substance or nature of the regulation, amendment, or repeal requested.*
- (b) The reason for the request.*
- (c) Reference to the authority of the state agency to take the action requested.*

Your letter addresses a myriad of concerns and allegations far beyond what is normally outlined in such a petition. Please note that it is difficult to discern from your letter exactly what is being requested under 11340.6 (a) above. The letter includes many topics such as "Home Invasion", flood conveyance capacity, detention facilities, etc. Some of these issues lack the required references under 11340.6 (c).

Before the Board can equitably address your concerns, we respectfully request that you consider re-submitting your letter in a more clear and concise fashion, in accordance with 11340.6. This will assist us in making an accurate appraisal of your concerns.

Sincerely,

A handwritten signature in cursive script that reads "George Gentry".

George Gentry, Executive Officer



BOARD OF SUPERVISORS  
COUNTY OF HUMBOLDT

825 5TH STREET

EUREKA, CALIFORNIA 95501-1153 PHONE (707) 476-2380 FAX (707) 445-7223

December 7, 2007

John Corbett, Chair  
North Coast Regional Water Quality Control Board  
5550 Skylane Blvd., Suite A  
Santa Rosa, CA 95403

Dear Chairman Corbett:

There is near-universal agreement that Freshwater and Elk River watersheds have been greatly impaired when comparing 1990 conditions to those of today. These impairments, as observed by watershed residents and others, are felt to be reflected in increased magnitudes and frequency of flooding, as well as being attributable to both canopy removal and erosion. Also, there have been serious negative affects to the County Road and Bridge system as well as substantial private property losses by the residents. Further, it is believed many tons of eroded soils have been deposited into the watercourses, causing a loss of conveyance which has lead to the increase in flooding.

The North Coast Regional Water Quality Control Board (RB) has the charge and authority to protect the watercourses from erosion. As a significant timber operator in these watersheds, Pacific Lumber (PL) has been cited for numerous water quality violations over the past decade. Commensurate with these citations, WQ has issued PL several Cleanup and Abatement Orders (CAO). Residents have contacted me with their concern and it is their understanding these CAOs have received minimal attention by PL and have gone largely un-enforced.

Consequently, these residents believe as long as there is no compliance then significant timber harvesting restrictions must be enacted. One can be concerned that reducing timber harvest still may not provide the protection and changes necessary to improve water quality concerns. But they are frustrated by these events and see no other means by which positive change can be produced. A solution that incorporates implementing restoration that make the CAOs work would be a reasonable answer, if PL would agree.

It is their belief, and it appears reasonably so; THP approval gives PL no incentive to attend to the CAOs.

It is the hope of residents who have visited me of both Freshwater and Elk River that the Regional Board, and State Board insist upon a coupling of THP approval and CAO resolution. This policy, temporary by definition, will insure that tangible steps will be taken by PL, to directly begin to improve watershed conditions. Their view of the matter is that the hope they had in finding resolution through the CAO process now appears broken. It makes regulatory sense that if the Cleanup and Abatement Orders are to have significance, and at the same time the causal activity is allowed to continue, it would seriously weaken the Department's ability to bring much needed solutions.

Thank you for considering these comments.

Sincerely,



John Woolley, 3<sup>rd</sup> District Supervisor  
County of Humboldt

JW:kh



Dec 28, 2007

**PETITION FOR EMERGENCY RULES**

STEPHANIE C. BENNETT, JESSE NOELL, and KRISTI WRIGLEY, the under signed, petition the Board of Forestry for Emergency Rules pursuant to the Administrative Procedure Act, Sections 11340 et seq, 11346, 11371 of the Government Code and/or Section 4555 of the Public Resource Code because 1) we are intentionally selected and subjected to harm by CDF authorized timber harvest, 2) the Board of Forestry has demonstrated over the last decade a comprehensive policy of affirmatively approving of and/or authorizing harm to specific residents in Elk River, 3) this policy is malicious and oppressive while violating numerous constitutional rights, 4) the Forest Practice Rules do not implement the intent of the Forest Practice Act section 4512 (d), 5) the Forest Practice Rules do not provide sufficient guidance to the director to implement the intent of the Forest Practice Act and/or Rules, 6) the Forest Practice Rules do not provide watershed control as required by section 4551.5 and defined by the legislative history leading to the adoption of the Forest Practice Act, 7) the Forest Practice Rules as applied through the functional equivalent of CEQA review affirmatively approve of, authorize and/or permit continuing damage to petitioners' private property, extinguishment of existing rights, infliction of preventable nuisance, threatening petitioners' health and safety 8) the Forest Practice Rules as applied through the functional equivalent of CEQA review affirmatively approve continuing violation of the Anti-degradation policy of the Federal Clean Water Act and Basin Plan Prohibitions in Elk River. In other words, the Board of Forestry has exceeded its authority.

In direct defiance of the Forest Practice Act, the Board of Forestry has not adopted rules based on a study of the factors that significantly affect watershed balance. The Board has failed to adopt rules that guide the director in the approval of timber harvest operations to provide for watershed control and flood control in Elk River sufficient to implement 4512 (d). Instead, the Board of Forestry has adopted rules which affirmatively approve of timber activities that maintain preventable nuisance, physical invasion, and occupation of petitioners' lands. The Board has refused since 1997 to adopt rules to halt timber operations where petitioners' properties are damaged as a result of peak flow increase and obstruction of the waters of the state by sediment discharged from timber operations. The 'potentially significant adverse impacts of cumulative

sediment inputs' described in Technical Rule Addendum #2 have long ago been realized. Additionally, where domestic water supply is impaired as a result of timber operations this fact of impairment has no consequence under the Board's Rules, and therefore does not require that ongoing timber operations halt until the impairment is remedied. The Board's Rules are carefully crafted to externalize the harm from timber operations onto petitioners, and delay meaningful remedy to petitioners for decades, thereby granting affirmative approval to business practices that create and maintain nuisance. The Board's Rules provide no consequence to timber operations for externalized harm, no remedy for petitioners' deprivations, but instead encourage competitive commercial activity that harms petitioners. The Board's Rules affirmatively authorize peak flow resulting from each new harvest operation to increase by a "less than substantial amount" and sediment discharge that "does not result in any measurable sediment load increase". [916.9 (a) and (a)(1) and (y)]. Thus the Forest Practice Rules in effect waive the statutory prohibition against maintaining a nuisance. Implicitly by this rule, the Board of Forestry accepts and intends the consequences that result from actions pursuant to this rule. Furthermore, 916.9 (y) strips petitioners of due process rights. The Board of Forestry as rulemaker, pursuant to the HCP and contractual agreement, engineered a standard of unequal protection under the law for petitioners' property, health and safety, and due process rights. Under what legal authority do the Board of Forestry Rules authorize the CDF director to approve timber operations in Elk River that extinguish the vested property rights and threaten health and safety? Is it fair to burden a selected group of property owners in order to advance the profits of one landowner's timber operations? Do the present members of Board of Forestry intend to violate the intent of the Legislature? To the extent that the Board of Forestry does not immediately promulgate emergency rules that remedy these constitutional deprivations, which of the members intend to violate the intent of the Legislature due to political pressure, corruption, and malice toward petitioners?

The Board of Forestry has refused to adopt rules that assure implementation of 4512 (d). Instead, the Board of Forestry has created a comprehensive policy through the Forest Practice Rules which affirmatively approves of rates and manner of timber operations that maintain nuisance and physical invasion and occupation of and damage to petitioners' lands. Case history has long held that "When a state regulatory agency affirmatively approves a practice of a regulated business, the practice has been held to be a state action."

The Forest Practice Rules are insufficient to prevent cumulative adverse watershed effects in Elk River that damage private property, extinguish vested rights, and threaten the health and safety of our community.

Egregiously, the Forest Practice Rules authorize continuing nuisance; nuisance that can be readily abated and prevented. The Board of Forestry Rules fail to advance a legitimate state interest in Elk River because it is not a proper or valid use of police power to perpetuate nuisance on petitioners' lands in order to provide for the economic viability of a third party. Why should the Forest Practice Rules institutionalize a pogrom against a pre-selected community of economically disadvantaged people in order to specifically benefit industrial timber operations that have given campaign contributions to the governor?

The Forest Practice Rules negate the intent of the Forest Practice Act, section 4512 (d). In direct defiance of 4512 (d), Forest Practice Rule 916.9 requires the Director of CDF to permit timber harvest activities that increase peak flow runoff and /or sediment discharge to impaired watersheds. This exaction burdens petitioners' lands with servitude. Higher courts have held "pollution of water constitutes nuisance." Persuasive courts have confirmed that "the government's imposition of servitude allows third party members of the public to invade and occupy claimants' lands." As applied, 916.9 allows third party members to invade and occupy petitioners' lands with third party's wastes. How much property damage should the government permit one landowner to inflict on his neighbors? Courts have held that graffiti is too much damage, that unwanted commercial phone calls can be too invasive, so why does the Board of Forestry feel it is permissible to grant timber operations the privilege to invade and occupy petitioners' lands and homes with their wastes, for decades?

The Forest Practice Rules have created rights for third party members of the public that never before existed— in Elk River these include the right create and maintain a nuisance on petitioners' lands using the waters of the state, to destroy crops, to destroy fences, to destroy septic system function, to threaten health and safety, to impair domestic and agricultural water supply, to destroy property value, to damage foundations, to create and maintain toxic mold conditions in the homes of petitioners, to deny ingress and egress including medical emergency response, to diminish property value, to create conditions that result in frequent and widespread stream bank failure.

Petitioners request immediate disclosure of any and all legal authority under which CDF and Board of Forestry provide compensation for constitutional deprivations, including takings.

Provide the following documents: 1) any and all guidance to CDF regarding 4512 (d) in relation to the Forest Practice Rules and/or THP approval, 2) the details of all past cases where compensation was paid to landowners as a result of exactions related to rule 916.9, statute 4512(d) or the Forest Practice Rules as a comprehensive unit. Until that authority is provided, along with the total available funds designated for allocation for such compensation, petitioners request an immediate cessation of all Forest Practice Rule permitted timber activities in the Elk River watershed.

Provide at the hearing all evidence in your administrative record demonstrating that 1) there is no impairment of domestic and agricultural water supply resulting from timber operations approved under the Forest Practice Rules, 2) that no crops have been damaged or destroyed by flood stage elevated as a result of vegetative canopy removal and soil compaction related to timber operations approved under the Forest Practice Rules, 3) that no septic system function has been extinguished as a result of river stage increase resulting from timber operations approved under the Forest Practice Rules, 4) that no property value has been diminished as a result of river stage increase resulting from timber operations approved under the Forest Practice Rules, 5) that no conditions of frequent and widespread stream bank failure in Elk River result from timber operations approved under the Forest Practice Rules, 6) that no conditions of deposition of sediment in amounts that result in aggradation or settlement of suspended solids occur on petitioners' lands as a result of timber operations approved under the Forest Practice Rules, 7) that no increase in the frequency, stage or extent of flooding on petitioners' lands has resulted from timber harvest operations in Elk River approved under the Forest Practice Rules, 8) that no timber harvest operations in Elk River approved under the Forest Practice Rules have contributed to the obstruction of the Elk River channel, 9) that the timber harvest operations in Elk River have resulted in attainment of the anti-degradation standard of the Federal Clean Water Act such that the domestic supply beneficial uses of water are equal or better than the levels existing in November 1978, 10) that the Forest Practice Act and Rules as functional equivalent of CEQA authorizes and/or affirmatively approves of preventable cumulative effects that result in physical invasion and occupation of petitioner's lands, extinguishment of vested property rights, and damage to property.

~~To the extent that~~ Board of Forestry cannot demonstrate 1-9 above, as applied to Elk River, the Forest Practice Rules have effected and continue to effect an uncompensated taking of petitioners' lands, property and vested rights. The Forest Practice Rules privilege third parties to invade and occupy petitioners' property. There is no direct connection between the benefits to the third party members and the exactions required of petitioners. This invasion interferes substantially with distinct investment backed expectations. Petitioners suffer a special kind of injury when the state selects specific property ownerships to be invaded and occupied, and permits a stranger to substantially damage petitioners existing infrastructure and beneficial use of property. A unanimous high court stated, without qualification, that "Where real estate is actually invaded by super-induced additions of water, earth, sand, or other material, .... so as to effectually destroy or impair its usefulness, it is a takings within the meaning of the constitution."

These Forest Practice Rules as applied in Elk River, perpetuate chronic, continuing, flooding and physical invasion of petitioners' private property. The Board of Forestry through its rules affirmatively grant approval to this manner, extent and process of invasion. This invasion is calculated to extinguish vested property rights and is both measurable and specifically authorized. Furthermore, existing uses of residents' properties are destroyed while the health and safety of residents are threatened. Rather than prevent injustice or even offer a level playing field, the Forest Practice Rules are specifically designed to make a mockery of petitioners' constitutional property rights and due process. Petitioners raised these very issues repeatedly to the Board of Forestry and CDF for the past 12 years. The design hides under the charade of due process provided by CEQA. The result is confiscatory taking and damage to property and a callous disregard for health and safety.

Incontrovertible evidence confirms that this devastation perpetrated onto private property neighbors of commercial timber harvest activities in Elk River is preventable. The Water Quality Control Board's findings confirm this. CDF's findings by John Munn confirm preventability. Independent Scientific Review Committees (funded by taxpayers) findings confirm this. The reasonable government agent should have relied on this evidence before approval of timber harvest rules or timber harvest plan approval. The reasonable government agent would have avoided destructive consequences

of his/her actions, given access to all the overwhelming evidence supporting the continued damages to residents.

Since about 1998, CDF officials repeatedly told petitioners that CDF must choose actions that continuously subject petitioners to increased and preventable flooding. On or about 2000, CDF officials told petitioners that petitioners would just have to sue and win suit before CDF would act to prevent the damage from increased flooding. Board of Forestry acted to inflict harm on petitioners in 1997 when Board refused to promulgate stop work rules for existing timber operations after more stringent rules were adopted to control sediment discharge. Over the past decade CDF and Board of Forestry have continuously carried out their acts of malice and oppression fully cognizant of the resulting harm to petitioners. Malice and oppression are readily supported by this callous disregard for residents' health and safety and continued deprivation of constitutional rights.

In accordance with Board of Forestry's policy, CDF defined "the acceptable level of preventable nuisance" and "the acceptable level of preventable floodwater invasion of petitioners' property", and the acceptable level of preventable sediment obstruction of river channel located on petitioners lands in Elk River. CDF's position that its planned fifty year recovery period for Elk River "does not impede recovery" is a clear and present fraud designed to enable the CDF-authorized third party use of petitioners property. Unless Board of Forestry affirmatively acts on our petition by promulgation of emergency rules that immediately halt all timber operations in Elk River until the nuisance is fully abated, CDF will continue to subject petitioners to preventable harm and maliciously threaten our health and safety. As such, futility will give petitioners no option but to go to both federal and state court.

### REQUEST FOR RELIEF

We petition the Board of Forestry to repair our water and water systems to the standard enjoyed by all residents of this valley on or about November 1978 to November 1984.



We petition the Board of Forestry for rules that require and ensure zero discharge of sediment from all timber operations and roads in Elk River, or in the alternative, a halt to all timber operations.

We petition the Board of Forestry to demonstrate by legal authority that petitioners' private property rights, health and safety, and domestic supply of water are entitled to less protection under law than the aesthetic value and clarity of the water in Lake Tahoe.

We petition the Board of Forestry to demonstrate by legal authority that the highest beneficial use of water in Elk River is either: the transport of industrial waste, or the highest beneficial use is maintaining domestic supply of water for residential use (some uses dating back more than 100 years).

We petition the Board of Forestry to demonstrate that all timber operations in Elk River since 1978 have been permitted and approved under the Forest Practice Rules and to list which timber operations have been certified as completed in compliance with the Forest Practice Rules, and which have been certified to attain the standards of the Clean Water Act Anti-degradation policy.

We petition the Board of Forestry to demonstrate by legal authority how much property damage petitioners are required to suffer without compensation or remediation when the government permits one landowner to discharge wastes into the waters of the state that flow over selected petitioners' property.

We petition the Board of Forestry to demonstrate by legal authority that the Board of Forestry may extinguish vested property rights of some selected landowners in order to benefit a neighboring landowner's private profits.

We petition the Board of Forestry to demonstrate by legal authority that public policy dictates that selected landowners should bear an uncompensated burden unlike other landowners elsewhere, in order to benefit a neighboring landowner's commercial advantage.

We petition the Board of Forestry to demonstrate by legal authority the process by which landowners are selected to bear burdens for neighboring commercial timber operations.

We petition the Board of Forestry to demonstrate by legal authority whether the Board is required to notify FEMA that the Boards' rules permit sediment and peak flow from new operations to be discharged into FEMA mapped flood insurance zones that have become obstructed with sediment as a result of permitted timber operations.

We petition the Board of Forestry to demonstrate by legal authority whether the Boards' rules can lawfully permit sediment and peak flow from new operations to be discharged into FEMA mapped flood insurance zones that have become obstructed with sediment as a result of permitted timber operations where the effect of the permit interferes with insurance contracts, mortgage agreements, ect.

We petition for an end to the comprehensive policy of the Board of Forestry that affirmatively approves of and/or authorizes increased peak flow and sediment discharge that results in physical invasion and occupation of petitioners' private property in Elk River.

We petition for an immediate stop work order for all road construction or reconstruction and timber harvest activities in Elk River.

We petition for the stop work order to remain in effect until the peak flow level has recovered to 1984 levels and sediment obstruction of the channel has recovered to those levels existing in either 1967 or 1984.

The constitutional deprivations to petitioners resulting from the current Board of Forestry Rules warrant new rules under Section 898.2 that avoid any and all new contributions from proposed plans that could prolong uncompensated physical invasion of petitioners' private property. In Lake Tahoe, courts held a zero discharge standard appropriate for all erosion associated with logging. Similarly, many municipalities require new construction to control all peak flow increase by storage and retention.

In other words, unless the Board of Forestry intends to authorize timber operations to externalize damage onto petitioners, a zero discharge standard for sediment and retention facilities for all peak flow are required for Elk River until peak flow has recovered to 1984 levels and sediment obstruction of the channel located on petitioners' lands has abated. Whereas petitioners enjoy property rights, timber operations are only privileged under certain circumstances to discharge sediment or super-induced runoff. One

circumstance is where no one is harmed. That circumstance does not apply to Elk River where many are harmed. The State has dominion and control over the waters of the state that transport sediment wastes and peak flow increase to petitioners' lands. Thus under 4512 (d), unless the Board of Forestry promulgates rules that provide for due process compensation to petitioners, the Board of Forestry cannot affirmatively privilege timber operations to discharge sediment or peak flow in amounts that harm petitioners. Furthermore, a rule is necessary to assure that the standards found in the anti-degradation policy of the Clean Water Act are attained. Petitioners request Board of Forestry's legal authority for maintaining and/or creating the existing nuisance conditions on petitioners' property.

It is necessary to promulgate new rules under Section 898.1(c). These rules are necessary to require the director to deny approval of all plans which propose timber operations where: 1) past timber operation have impaired beneficial use of water for domestic supply and water quality standards are not presently being attained, 2) peak flow and/or sediment impacts from past timber operations have resulted in increased flood frequency and/or flood stage affecting existing property rights, 3) peak flow and/or sediment impacts from past timber operations have resulted in increased flood frequency and/or flood stage affecting health and safety and/or access, 4) the assimilation capacity of the stream reach for settleable solids has been exceeded, 5) net aggradation in amounts that obstruct the channel is evident, 6) threats to health and safety, water supply, nuisance, access and property damage have been raised and are unabated, 7) the plans peak flow or sediment discharge could contribute to interference with a contractual agreement. These rules are necessary to prevent the director from externalizing harm to petitioners.

#### Statement of facts

In Elk River, the 100 year flood level as mapped in 1986 by FEMA has been increased and exceeded as many as 12 times since 1994 on petitioners' properties as a result of timber activities approved pursuant to the Forest Practice Rules.

The increase in flooding in Elk River is a result of the discharge of waste and runoff from timber harvest operations permitted and/or completed pursuant to the Forest Practice Rules.

More than thirty million dollars worth of property damage and infrastructure damage is estimated to have resulted from permitted timber harvest activities and operations in Elk River carried out and/or completed in accordance with the Forest Practice Rules.

The Forest Practiced Rules do not require timber operations to cease and desist in the Elk River watershed where flood conveyance capacity of the channel as a function of flood height has been diminished below the levels mapped by FEMA, August 1986, and runoff has been significantly increased above 1986 levels as a result of CDF permitted harvest activities.

*physical force*  
~~Home invasion~~ by super-induced flood water is not authorized by the Forest Practice Act or the California Constitution.

The Forest Practice Rules do not require runoff detention facilities to control changes in runoff (above naturally occurring background conditions) associated with roads, compaction, and vegetative canopy removal.

The Forest Practice Rules do not require sediment discharge from harvest activities to be continuously controlled such that 1986 FEMA mapped flood levels are not exceeded.

The Forest Practice Rules do not require sediment discharge from harvest activities to be continuously controlled such that the assimilation capacity of Elk River for sediment is not over allocated in the nuisance flood reach portion of Elk River.

The Board of Forestry knows that the sediment discharge rate from past and present timber harvest activities in Elk River exceeds the sediment discharge rate under which the Elk River channel evolved.

The Board of Forestry considered sensitive watershed rules and/or zero discharge rules for Elk River, but declined to promulgate such rules. Therefore, Board of Forestry affirmatively approves of third party's use the waters of the state as an instrumentality to transport and dump harvest related sediment on the ownerships of petitioners.

The California Department of Forestry weighed Timber Productivity Act-benefits of timber harvesting against the damages of flooding of petitioners'

homes and property before approving the extent and duration of flood damage modeled to result from timber harvesting activities.

Petitioners have suffered and continue to suffer property damages, harm to health and safety, denial of access, deprivation of due process rights, oppression and malice, as a result of the Forest Practice Rules. Takings damages continue and are documented in petitioners' Victims Compensation Claim served on Board of Forestry earlier this year. Board of Forestry has not opposed petitioners' Victims Compensation Claims.

Petitioners suffered oppression when the Board of Forestry determined that flooding and flood damage could be rapidly reduced by a moratorium on harvest coupled with rapid remediation of all sediment sources. Rather than choose available actions to stop irrefutable harm to a known group of landowners, instead the Board of Forestry made the decision to prolong, and even increase the flooding by not requiring remediation of all sediment sources, not requiring zero discharge from all erosional sources, and by not requiring the detention and storage control of peak flow discharge before permitting new timber operations.

STEPHANIE C. BENNETT

SIGNED Stephanie C Bennett DATED 12/28/07 AT Eureka, CA

JESSE NOELL

SIGNED Jesse Noell DATED 12/28/07 AT San Francisco, CA

KRISTI WRIGLEY

SIGNED Kristi Wrigley DATED 12/28/07 AT Elk River, Ca.